THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO.24443 OF 2006
AND
WRIT PETITION NO. 23351 OF 2006

DATED: 07-12-2006

WRIT PETITION NO.24443 OF 2006

BETWEEN:

M/s. Sai Priya Constructions,
Rep. By its Managing Partner
Gona Ravinder Rao, S/o. Chandra Rao
And three others … Petitioners

And

The Special Court under
A.P. Land Grabbing (Prohibition) Act
B.R.K.R.Bhavan, Tankbund, Hyderabad
And 11 others
…Respondents

W.P.No. 23351 of 2006:

Between:
M/s. CBR Model Estates, a partnership firm,
Rep.by its Managing Partner
Sri Gummadi Ravi Kumar, S/o.Kodanda Ramaiah
And six others
… Petitioners

and

The Special Court under the A.P.Land Grabbing (Prohibition)
Act, B.R.K.R. Bhavan, Tank Bund, Hyderabad and 11 others
… Respondents

THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO.24443 OF 2006
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COMMON ORDER: (per TCSR,J)

Inasmuch as both these writ petitions emanate from common order dated 31-08-2006 passed by the learned Special Court under the A.P. Land Grabbing Prohibition Act, these writ petitions can be disposed of together.

The writ petitioners are the respondents in L.G.C.No.29 of 2006 filed by the State as the applicant therein. In the said land grabbing case, the State filed an interlocutory application in I.A. 446 of 2006 under Order 39 Rules 1 and 2 of CPC requesting the Court to grant interim injunction restraining the respondents from making any constructions by changing the nature of the schedule mentioned property.

It seems at the threshold in I.A.446 of 2006 that the Special Court granted an ad-interim injunction order in favour of the applicants. The first respondent in the land grabbing case filed another interlocutory application in I.A.No.548 of 2006 seeking modification in the order passed in I.A.No.446 of 2006.

The case of the applicant seems to be that the land bearing Survey No.44 admeasuring Ac. 169.38 guntas of Miyapur village is the Government land and the respondents have grabbed the same without any legal entitlement thereto. The application schedule mentioned land stands registered in the revenue records as 'Poramboke'. One of the persons by name Abdul Basith and Shaik Kareemuddin earlier managed to get their names entered in the Pahani for the year 1950-51 without there being any valid orders from the competent authorities surreptitiously.

Since the land in question is situated in Miyapur village, which is a zagir village and after the advent of the A.P. Telangana Area (Zagir regulation) Act, all the lands in zagir vested in the State and the zagirdars are only entitled for the compensation. It is the stand of the applicant that the land in question is the Government land and the respondents are the land grabbers.

It is the case of the respondents in essence that the land covered by Survey No.44/1 originally belonged to one Venkaiah and for his default in paying the land revenue, the said land was brought to sale in public auction in the year 1970 and Mohammad Abdul Basith Khan was the successful bidder in the said public auction who paid an amount of Rs.65,340/- to the erstwhile Government and purchased the land and his name stood recorded in the Sethwar of 1352 Fasli as pattadar and also the other survey numbers of Miyapur village. In the year 1947, a part of the said land was acquired by the Assistant Secretary (Revenue) for a public purpose of laying P.W.D. road from Hyderabad to Sholapur and compensation of Rs.3,318/- was paid to Mohammad Abdul Basith Khan and that after the death of said Mohammad Abdul Basith Khan, mutation was made in the revenue records in the names of Abdul Baquer Khan and Syedunnisa Begum and Asadunnisa Begum and therefore, the land in question is not the Government land.

Having regard to the rival claims set forth inter alia in the pleadings by the parties to L.G.C.No.29 of 2006 and having regard to the undisputed fact that the respondents and their predecessors had been in possession of the land in dispute for a long time i.e. from more than 60 years and as further activities had been going on ever since then and as number of buildings had been constructed in various portions of the land in question including
a cinema theatre, the learned Special Court was of the view that
a continuous question as regards interpretation of entries made in the revenue records etc. shall be considered and decided only after a full pledged trial in the case and therefore, what was germane for consideration in the interlocutory applications being the balance of convenience and irreparable loss eventually under the impugned common order, the learned Special Court modified the order passed in I.A.No.446 of 2006 earlier on 2nd May 2006 by directing the applicant not to interfere with the respondents right to make

constructions as per the plans already approved and not to demolish the constructions, if any made already. At the same time, the Court also observed that such constructions shall always be subject to the result of the application in L.G.C.No.29 of 2006. While thus modifying the order, at the end, learned Special Court added a rider to the effect that the respondents shall not alienate the property in any manner or create interest in third parties pending disposal of the land grabbing case.

The petitioners in the instant writ petitions, who are not parties to the main application in L.G.C. 29 of 2006 and the concomitant interlocutory applications after having sought leave from this Court to file two instant writ petitions assailing only that part of the order in the impugned order to the effect that the respondents shall not alienate the property in any manner or create interest in third parties pending disposal of the land grabbing case. Obviously there seems to have been no grievance insofar as the order modifying the earlier injunction granted by the learned Special Court on 02-05-2006 in I.A.No.446 of 2006.

Both the learned counsel sought to address arguments touching incidentally the merits of the main case. Without adverting into the merits of the case, the instant writ petitions can be disposed of.

In Para-13 of the impugned order, *inter alia*, the learned Special Court was of the clear view that the respondents and their predecessors in title had been in possession from a long time, i.e., more than 60 years and development activities were going on ever since then. The learned Special Court further observed in the same paragraph that number of buildings had been constructed, layouts applied for were sanctioned and the cinema theatre had been functioning as on today. Having thus observed, the learned Special Court confined itself to the balance of convenience and irreparable loss. In its view, if an injunction were to be maintained, that would result in irreparable loss particularly in respect of the constructions,

which are half through to the owners thereof. In Para-14, the learned Special Court further observed that the Government had powers in allowing the development activities on the land in question by granting permissions, licences, approvals to the layouts etc. At the end of Para-14, it has been observed further that the respondents and their predecessors in title are in possession of the application schedule property from the past several years. In that view of the matter, the learned Special Court modified its earlier order and further directed the State not to interfere with the respondents' right to make constructions as per the plans already approved and constructions if any made already directed not to be demolished. However, the Court has allowed the constructions ultimately subject to the result of the L.G.C., inasmuch as every act on the part of the respondents is subject always to the result in L.G.C.

It is now sought to be contended before us by both the learned counsel for the writ petitioners that even the alienations made pending adjudication of the main land grabbing case, indeed, they are always subject to the result of the land grabbing case and what is more they are covered by doctrine of lis pendens enjoined under Section 52 of the Transfer of Property Act. The eventual clarification of the order sought to be made by means of a rider that the respondents shall not alienate the property in any manner or create any interest in third parties, works out any amount of hardship to the writ petitioners.

It is the contention of the both the learned counsel for the writ petitioners that if the flats, which have been constructed duly, are not permitted to be sold, the eventual irreparable loss cannot be alleviated and the very purpose in having modified the order passed earlier by the learned Special Court having due regard to the developmental activities made and has been carried on since a long time would get defeated.

We see every force in the contention of the learned counsel. The apprehension of the State seems to be that if such alienations

were to be permitted, it would result in endless alienations in favour of third parties and in the event, the application is allowed in favour of the State, it would be highly difficult for the State to get all those subsequent alienees evicted.

To obviate such apprehension and to strike a balance, it is appropriate to see that the main land grabbing case is disposed of as expeditiously as possible. When the parties have been in possession of the land in dispute for the past more than 60 years and number of buildings have already been constructed and are being constructed, the damage, if any had already been caused to the State, in the event, the State succeeds before the Special Court tomorrow, having regard to such developmental activities, which cannot be put an end to, we are of the considered view that the alienations cannot also be stopped as otherwise the very developmental activity might get stalled which may eventually result in irreparable loss to the persons, who developed the land. When the builders constructed flats and multi-storied buildings and if they are not permitted to sell those plots it would obviously result in irreparable loss and untold misery.

For the above reasons, we are of the considered view that such a clarification sought to be made at the end in Para-15 in the impugned order by the learned Special Court will not strike the balance as is sought to be made by the learned Special Court and prevent obvious irreparable loss.

Inasmuch as the writ petitioners are third parties to the main case, they can seek to come on record in L.G.C.No.29 of 2006 and after such addition of parties, an endeavour can be made by the learned Special Court to see that the main land grabbing case itself is disposed of as expeditiously as possible. Needless to mention that the alienations made, if any are always subject to the result in the L.G.C. and in the event, the State succeeds before the Special Court, those transactions are hit by the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act.

For the above reasons, both the writ petitions are allowed to the extent indicated hereinabove. Under the circumstances, there shall be no separate order as to costs.

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T.CH. SURYA RAO, J.

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G. CHANDRAIAH, J.

Dated: 07..12..2006.
Rns.